

**MINUTES OF  
FAIRFAX COUNTY PLANNING COMMISSION  
WEDNESDAY, SEPTEMBER 14, 2005**

UNAPPROVED  
OCTOBER 25, 2005

PRESENT: Walter L. Alcorn, Commissioner At-Large  
John R. Byers, Mount Vernon District  
Frank A. de la Fe, Hunter Mill District  
Janet R. Hall, Mason District  
James R. Hart, Commissioner At-Large  
Nancy Hopkins, Dranesville District  
Ronald W. Koch, Sully District  
Kenneth A. Lawrence, Providence District  
Rodney L. Lusk, Lee District  
Peter F. Murphy, Jr., Springfield District  
Laurie Frost Wilson, Commissioner At-Large

ABSENT: Suzanne F. Harsel, Braddock District

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The meeting was called to order at 8:25 p.m. by Chairman Peter F. Murphy, Jr., in the Board Auditorium of the Fairfax County Government Center at 12000 Government Center Parkway, Fairfax, Virginia 22035.

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**COMMISSION MATTERS**

Commissioner Alcorn noted that the Planning Commission's Environment Committee had met earlier this evening with the Environmental Quality Advisory Committee (EQAC) to receive a briefing on the pending Public Facilities Amendment regarding drainage divides and to discuss stream protection strategies and tools. He announced that on Wednesday, September 28, 2005, at 7:00 p.m. in the Government Center, the Environment Committee would host a public meeting on the topic of drainage divides. Commissioner Alcorn further announced that the Environment Committee and EQAC would meet again on Wednesday, October 19, 2005, at 7:30 p.m. in the Board Conference Room, to continue discussion on stream protection strategies and tools.

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Commissioner Wilson announced her intent to defer the public hearing on the Public Facilities Manual Amendment regarding drainage divides from September 28, 2005 to Wednesday, October 5, 2005. She noted that the Board of Supervisors' public hearing on this amendment was currently scheduled for Monday, October 17, 2005.

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Commissioner Hart stated that the Zoning Ordinance Amendment regarding certain additional Special Permit or Special Exception uses had been deferred indefinitely by the Board of Supervisors as a result of the decision made by the Virginia Supreme Court in the case of *Donald H. Cochran, et al. v. Fairfax County Board of Zoning Appeals, et al.* dated April 23, 2004. He said County staff would host six public meetings on this topic, noting that the dates, times, and locations were posted on the County website. Commissioner Hart announced that the first of the public meetings would be held tomorrow at 7:00 p.m. at the Dranesville District McLean Governmental Center located at 1437 Balls Hill Road in McLean.

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Chairman Murphy congratulated the Planning Commission Office staff for producing the premiere edition of the Commission newsletter, *Planning Communicator*, noting that it could be viewed on the Commission website.

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Chairman Murphy noted that the Planning Commission would not meet tomorrow, Thursday, September 15, 2005, or the following Wednesday, September 21, 2005. He said the Commission would resume meeting on Thursday, September 22, 2005.

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Commissioner Byers announced his intent to defer the joint public hearing on RZ 2004-MV-011, SE 2004-MV-011, and PCA 89-V-062-2, Colchester Land Company LLC, from September 22, 2005 to Thursday, October 6, 2005.

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Commissioner Lusk MOVED THAT THE DECISION ON SE 2004-LE-033, FRANCONIA LODGE #646, LOYAL ORDER OF MOOSE, INC., SCHEDULED FOR SEPTEMBER 15, 2005, BE FURTHER DEFERRED TO A DATE CERTAIN OF SEPTEMBER 22, 2005.

Commissioner Hall seconded the motion which carried unanimously with Commissioner Byers not present for the vote; Commissioner Harsel absent from the meeting.

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Commissioner Lawrence MOVED THAT THE PUBLIC HEARING ON SEA 2002-PR-017, CAPITAL ONE BANK, SCHEDULED FOR SEPTEMBER 15, 2005, BE DEFERRED TO A DATE CERTAIN OF OCTOBER 6, 2005.

Commissioner Lusk seconded the motion which carried unanimously with Commissioner Byers not present for the vote; Commissioner Harsel absent from the meeting.

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Commissioner Lawrence MOVED THAT THE DECISION ON RZ 2005-PR-003, DUNN LORING METRO APARTMENT PARTNERSHIP, SCHEDULED FOR SEPTEMBER 22, 2005, BE DEFERRED TO A DATE CERTAIN OF OCTOBER 6, 2005.

Commissioner Wilson seconded the motion which carried unanimously with Commissioner Byers not present for the vote; Commissioner Harsel absent from the meeting.

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FS-H05-20 - VERIZON WIRELESS, 2300 Dulles Corner Boulevard

Commissioner de la Fe MOVED THAT THE PLANNING COMMISSION CONCUR WITH THE "FEATURE SHOWN" DETERMINATION IN FS-H05-20.

Commissioner Alcorn seconded the motion which carried unanimously with Commissioner Byers not present for the vote; Commissioner Harsel absent from the meeting.

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FS-H04-27 - T-MOBILE, 9850 Clarks Crossing Road

Commissioner de la Fe MOVED THAT THE PLANNING COMMISSION CONCUR WITH THE "CONSENT AGENDA ITEM" ON FS-H04-27, T-MOBILE.

Without objection, it was so ordered.

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FS-S05-14 - FAIRFAX COUNTY PARK AUTHORITY, 4134/4140 West Ox Road

Commissioner Murphy MOVED THAT THE PLANNING COMMISSION CONCUR WITH THE "FEATURE SHOWN" DETERMINATION IN FS-S05-14.

Commissioners Hall and Lawrence seconded the motion which carried unanimously with Commissioner Byers not present for the vote; Commissioner Harsel absent from the meeting.

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FS-L05-15 - NEXTEL COMMUNICATIONS, INC., 3101 Burgundy Road

Commissioner Lusk MOVED THAT THE PLANNING COMMISSION CONCUR WITH THE “FEATURE SHOWN” DETERMINATION IN FS-L05-15.

Commissioners Hall and Lawrence seconded the motion which carried unanimously with Commissioner Byers not present for the vote; Commissioner Harsel absent from the meeting.

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ORDER OF THE AGENDA

In the absence of Secretary Harsel, Chairman Murphy established the following order of the agenda:

1. SEA 94-M-047 - SAUL SUBSIDIARY LIMITED PARTNERSHIP
2. RZ 2005-MA-008/FDP 2005-MA-008 - FF REALTY AND CLEMENTE LLC
3. 2232-S05-5 - WASHINGTON, D.C., SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS  
SE 2005-SP-015 - WASHINGTON, D.C., SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS
4. PCA 1999-PR-035 - BATAL CORBIN, LLC

This order was accepted without objection.

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SEA 94-M-047 - SAUL SUBSIDIARY LIMITED PARTNERSHIP - Appl. under Sects. 7-607, 9-620, and 9-622 of the Zoning Ordinance to amend SE 94-M-047 previously approved for a fast food restaurant or drive-in bank in a Highway Corridor Overlay District and a waiver of open space requirements and to amend SE 056-78 previously approved for a waiver of certain sign regulations, to permit building additions, an additional fast food restaurant with drive through, site modifications, reduction in land area, waiver of certain sign regulations and waivers/modifications in a Commercial Revitalization District. Located at 6201 Arlington Blvd. (Seven Corners Shopping Center) on approx. 31.56 ac. of land zoned C-7, HC, SC and CRD. Tax Map 51-3 ((1)) 29, 29A and 51-3 ((16)) (B) 1. MASON DISTRICT. PUBLIC HEARING.

Mark Looney, Esquire, with Cooley Godward LLP, reaffirmed the affidavit dated July 14, 2005. There were no disclosures by Commission members.

Tracy Swagler, Zoning Evaluation Division, Department of Planning and Zoning, presented the staff report, a copy of which is in the date file. She noted that staff recommended approval of the application.

In response to questions from Commissioner Hart, Ms. Swagler said staff would confirm that the issue of whether the applicant decided to build a sidewalk on the northern side of Route 50 or contribute funds for its construction had been addressed in the development conditions. She stated that if the applicant decided to contribute funds, then the sidewalk would probably be built as part of the pedestrian bridge project that was currently under design by the Virginia Department of Transportation (VDOT).

Mr. Looney described the redevelopment and rehabilitation process of the Seven Corners Shopping Center which had begun in 1994. He noted that the application had been filed in 2001 to reflect the existing conditions on the property and to update the plans. He explained that the applicant had requested that the Commercial Revitalization District parking reduction requirements set forth by the Zoning Ordinance replace the existing parking reduction agreement that had been approved in 1994 by the Board of Supervisors. He stated that the application incorporated two significant public benefits: 1) dedication of approximately 10,000 square feet for the Metro bus transfer station located on the west end of the property, and 2) design of the pedestrian bridge across Route 50. In reference to Commissioner Hart's question, Mr. Looney pointed out that the sidewalk had been incorporated in VDOT's plans to be funded as part of the bridge project. He expressed concern about how the dedication for the pedestrian bridge depicted in Development Condition Number 11 would affect the shopping center parking spaces that had been prescribed in existing tenant leases. He suggested that a provision be added to Development Condition Number 14 stating that the applicant's contribution for routine maintenance of the transit facility would end after 10 years or until the applicant was able to secure insurance or appropriate indemnification to perform daily maintenance of the facility. He further suggested that the potential retaining wall depicted in Development Condition Number 16 be designed to look similar to the existing shopping center.

Responding to a question from Commissioner Hall, Mr. Looney explained that the phrase, "with comment by the applicant," added to the end of Condition Number 9 implied that the applicant would be able to review and comment on the plans that would determine the locations of the ancillary permanent and temporary easements needed during the widening of Route 7. Commissioner Hall recommended that this phrase be removed because she said it was inappropriate for the applicant to impose such conditions on County staff. Ms. Swagler replied that staff would consider her recommendation.

Commissioner Hall suggested that the reference to the VDOT project number remain in Development Condition Number 11 and language be added that stated the project had been approved by the Virginia Commonwealth Transportation Board after a public hearing and the plans had been tied to the VDOT drawing dated June 2005. Mr. Looney replied that the applicant would consider her suggestion.

In response to a question from Commissioner Hall, Ms. Swagler stated that although the applicant had been maintaining the existing transit center on the subject property as required by the current parking reduction agreement, she said that due to insurance legalities, some changes would have to be made concerning how maintenance would be provided at the proposed transit facility.

Commissioner Hall disagreed with Development Condition Number 16 because she said it dictated how VDOT should build the retaining wall.

Commissioner Hart recommended that a condition indicating whether the applicant would construct the sidewalk or contribute funds for its construction be added. Commissioner Hall concurred.

Responding to a question from Commissioner de la Fe, Ms. Swagler stated that staff would re-examine the recommended approval of a waiver of the modification of the trail requirement along Route 50 in favor of an existing four-foot wide sidewalk. She said she believed that as part of the pedestrian bridge plans, sections of the sidewalk would be upgraded to at least five feet wide.

There being no speakers for this application, Chairman Murphy noted that a rebuttal statement was not necessary. There were no further comments or questions from the Commission and staff had no closing remarks; therefore, he closed the public hearing and recognized Commissioner Hall for action on this case. (A verbatim excerpt is in the date file.)

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Commissioner Hall MOVED THAT THE PLANNING COMMISSION DEFER DECISION ON SEA 94-M-047 TO A DATE CERTAIN OF SEPTEMBER 22, 2005 WITH THE RECORD TO REMAIN OPEN FOR WRITTEN COMMENT.

Commissioners Byers and Koch seconded the motion which carried unanimously with Commissioner Harsel absent from the meeting.

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RZ 2005-MA-008/FDP 2005-MA-008 - FF REALTY AND CLEMENTE LLC - Appls. to rezone from C-3, R-3, SC, HC, and CRD to PRM, SC, HC, and CRD to permit residential development at a density of 57.56 dwelling units per acre (du/ac) including ADUs, a Floor Area Ratio (FAR) of 1.65, and approval of the conceptual and final development plans. Located on the E. side of South George Mason Dr., S. of the Arlington County line and W of S. Fourteenth St. on approx. 7.21 ac. of land. Comp. Plan Rec: option for residential up to 1.45 FAR. Tax Map 62-3 ((1)) 13A, 14, 15, 17, 18, and 19; 62-3 ((7)) 1A, 2A, 3, 4, 5, 6A, 7A, 8, 9, and 10 and portions of Condit Ct.,

S. Greenbriar St. and related cul-de-sacs public rights-of-way to be vacated and/or abandoned. (Approval of this application may enable the vacation and/or abandonment of portions of the public rights-of-way for Condit Ct., S. Greenbriar St. and related cul-de-sacs to proceed under Section 15.2-2272 (2) of the *Code of Virginia*.)  
MASON DISTRICT. PUBLIC HEARING.

Elizabeth Baker, with Walsh, Colucci, Lubeley, Emrich & Terpak, PC, reaffirmed the affidavit dated August 19, 2005. There were no disclosures by Commission members.

Tracy Swagler, Zoning Evaluation Division, Department of Planning and Zoning, presented the staff report, a copy of which is in the date file. She noted that staff recommended approval of the applications.

Ms. Baker stated that the subject applications would implement a Comprehensive Plan Amendment that had been adopted by the Board of Supervisors on September 27, 2004. She explained that three levels of underground structured parking with one access point on South George Mason Drive and two on South 14th Street and a six to seven story building along Route 7 would be constructed on the site. She noted that the applicant had been working with Arlington County planning staff and residents of the Skyline Village townhome community and Skyline Plaza to address concerns. Ms. Baker said the proposal would set the tone for new development in Bailey's Crossroads, noting that 45 percent open space would be provided that included major pedestrian pathways and a series of lawn spaces that featured seating and active recreation. She indicated that as proposed by the neighbors, the applicant had increased the number of underground parking spaces above what had been required by the Zoning Ordinance and revised the proposed park in the northwest corner of the site to include more tree preservation. Ms. Baker explained that the applicant had made commitments to implement traffic calming and sidewalk connection improvements in Arlington County and pedestrian connection improvements in Fairfax County. She pointed out that the applicant had also made a commitment to work with the neighbors to create consistent pedestrian pathways to help revitalize this portion of Bailey's Crossroads. She stated that the applications had received support from the Bailey's Crossroads Revitalization Committee and the Mason District Land Use Committee.

In response to questions from Commissioner Hall, Ms. Baker noted that the applicant had worked with the Claremont Citizens Association of Arlington County, the Skyline Village townhome community of Fairfax County, and Arlington County staff and School Board representatives to revise the proposed park. She said the applicant had contacted the adjacent neighbors in both counties regarding the Plan amendment and the subject applications, noting that Arlington County staff and citizens had met with the applicant and the Mason District Land Use Committee to address issues. Ms. Baker discussed the street improvements outlined in Proffer Number 10 and pointed out that if they were not approved by Arlington County, then the applicant would contribute \$50,000 to the county for traffic calming and sidewalk improvements.

Ms. Baker stated that the Mason District Land Use Committee had voted not to recommend approval of the applications by a vote of 3-2-1.

Commissioner Hall commented that the proposed development would be compatible with Skyline Village. She then recognized Mason District Supervisor Penelope Gross and the applicant for their work and outreach to Arlington County and Mason District citizens.

Responding to a question from Commissioner Hart, Ms. Swagler said she would confirm whether the proposed patios and retaining walls would be allowed to protrude into Arlington County since the building itself was still located in Fairfax County. Ms. Baker replied that if this extra feature posed a problem, she said the applicant would remove it from the plans since it was not part of the building face itself.

Chairman Murphy called the first listed speaker and recited the rules for public testimony.

David Green, 3556 South George Mason Drive, Unit 18, Alexandria, President of the Skyline Village Condominium Association Board of Directors, expressed opposition to the proposal due to inadequate parking, increased traffic, incompatibility with the surrounding neighborhood, excessive density, lack of consolidation, vote to not recommend approval by the Mason District Land Use Committee, and loss of trees. He said the applicant had not responded to the density concerns expressed by the Skyline Village Condominium Association and the Claremont Citizens Association; however, he noted that the applicant had addressed some parking and traffic issues. He recommended that the applicant continue to work with the neighbors to produce a more compatible plan, obtain the support of the Mason District Land Use Committee, and present the revised applications to the Planning Commission again.

Commissioner Hall asked that the applicant later address the issue regarding the height of the proposed building across South George Mason Drive from Mr. Green's townhouse development, but said she did not think the building would be significantly taller than the townhouses due to the topography of the area.

William Fry, 3560 South George Mason Drive, Alexandria, spoke in opposition to the applications, citing lack of available information about the proposal, incompatibility of a rental building with the surrounding area, detrimental change to the character of the neighborhood, excessive density, lack of communication from the applicant, opposition from adjacent Arlington County residents, and deficient easement for traffic entering Arlington County.

James Hurysz, P.O. Box 5191, Arlington, voiced his objection to the proposal, citing adverse impact on Arlington County residents; inadequate traffic improvements; increased traffic; inappropriate number of parking spaces; decreased quality of life; objections raised by the Virginia Department of Transportation regarding traffic from the site; insufficient open space; loss of existing affordable housing; subsidy for wastewater treatment provided by Arlington taxpayers; excessive density; and lack of maintenance of the vacant lots on the subject property.



Mr. Hurysz suggested that a comprehensive multi-jurisdiction ride-sharing and vanpooling program and shuttle bus service be implemented and the number of parking spaces be no greater than 1.2 per household. (A copy of his remarks is in the date file.)

Commissioner Hall stated that in response to the Arlington County citizens who participated in the hearings, the applicant had agreed to provide two parking spaces for each unit so that no tenants would be charged for additional parking.

Commissioner Lawrence pointed out that the applicant had provided specific quotas and methods that included ride-sharing in Proffer Number 13 regarding Traffic Demand Management (TDM).

Chris Colwell, 1947 South George Mason Drive, Alexandria, asked whether Metro public transit would be involved in this project. He then expressed concern about high density in proximity to Wakefield High School in Arlington County, excessive traffic, and insufficient parking.

There being no more speakers, Chairman Murphy called for a rebuttal statement from Ms. Baker.

Ms. Baker addressed Mr. Green's comments regarding the adjacency of Skyline Village and the proposed development, noting that the townhouses sat approximately 45 feet tall above South George Mason Street in relation to proposed Building D which had a maximum height of 50 feet. She explained that the building would feature two wings that extended toward the streetscape, a large setback, and a courtyard area. She noted that she did not debate the fact that the proposed development would cause a significant change to the site, but said she believed that it would be very compatible with Skyline Village. Ms. Baker pointed out that staff had encouraged the applicant to decrease the number of units and construct a six to seven story building on the site to ensure that not every development along Leesburg Pike would be the same height. She then responded to Mr. Fry's comments regarding notice of the proposal, noting that she had sent 18 letters to members of the Skyline Village Condominium Association, including Mr. Green, the president, and said the applicant had made an effort to include the community in discussions. She then addressed the parking issue, noting that the applicant had increased the number of spaces to two per unit to prevent overflow parking on the adjacent streets.

Ms. Baker responded to questions from Commissioner Wilson regarding the four single-family detached lots on the Arlington County side, the design of Building A, fire and emergency access, and paving on the subject property.

In response to a question Commissioner Alcorn, Ms. Baker said the applicant had received support from the residents of Skyline Plaza.

Responding to questions from Commissioner Hart, Ms. Swagler stated that condemnation by Fairfax County of private property rights had been done before in rezoning applications when there was a public benefit to the improvement.

Ms. Swagler explained that temporary construction easements would need to be provided on the offsite Calvary Baptist Church parcel for the creation of a right-turn lane from westbound Leesburg Pike on to northbound South George Mason Drive so that turning vehicles would not interrupt the flow of through traffic. She said that if the applicant was not able to purchase the land from the church, then the condemnation process would be performed at the applicant's expense.

Commissioner Hart requested that staff provide him with the actual number of condemnation proceedings that had been performed by the County.

Ms. Baker reported that the applicant had been working with the church to provide a new sidewalk and streetscape along their property at the applicant's expense. She pointed out that the church would also receive density credit for the right-of-way dedication.

In response to questions from Commissioner Wilson, Ms. Baker explained that Proffer Number 7 indicated that if the applicant had not been able to construct the right-turn lane before the 300th Residential Use Permit had been issued, the Zoning Administrator could agree to a later date for its completion. She indicated that there was a present need for the turn lane which would be a major public benefit. Ms. Baker said she believed the applicant would be successful in negotiations with the church to avoid a condemnation proceeding. She stated that the church would still meet Zoning Ordinance requirements if it redeveloped its property or expanded its building.

Responding to a question from Commissioner Hall, Chuck Almquist, Fairfax County Department of Transportation (DOT), noted that DOT would not support the applications without assurance that the right-turn lane could be constructed. He explained that DOT viewed the lane as part of the applicant's responsibility since a lot of vehicles were expected to turn right onto South George Mason Drive to gain access into the garage and said the lane would also be beneficial to the public due to capacity problems along Route 7. He stated that the applicant could construct the right-turn lane without causing any major detriment to the church other than the loss of greenspace along the Route 7 frontage.

In response to another question from Commissioner Hall, Ms. Baker noted that the church did not want to sell its property, but said the applicant would discuss with the church the amount of land needed to construct the right-turn lane. She pointed out that it would more efficient for a vehicle traveling westbound on Route 7 to turn onto South 14th Street instead of South George Mason Drive to gain access into the garage. Commissioner Hall suggested that the applicant contact the church and address Commissioner Hart's concerns.

Responding to a question from Commissioner de la Fe, Ms. Baker said the applicant would specify in Proffer Number 13D the amount that would be added to the Smartrip Card.

Commissioner Alcorn recommended that staff respond to Commissioner Hart's request to provide the statistics on how often the County performed condemnation proceedings. Ms. Swagler concurred.

There were no further comments or questions from the Commission and staff had no closing remarks; therefore, Chairman Murphy closed the public hearing and recognized Commissioner Hall for action on this case. (A verbatim excerpt is in the date file.)

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Commissioner Hall MOVED THAT THE PLANNING COMMISSION DEFER THE DECISION ON RZ 2005-MA-008 AND FDP 2005-MA-008 TO A DATE CERTAIN OF SEPTEMBER 22, 2005, WITH THE RECORD TO REMAIN OPEN FOR WRITTEN COMMENT.

Commissioner Byers seconded the motion which carried unanimously with Commissioner Harsel absent from the meeting.

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The next public hearing was in the Springfield District; therefore, Chairman Murphy relinquished the Chair to Vice Chairman Byers.

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2232-S05-5 - WASHINGTON, D.C., SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS - Appl. under Sects. 15.2-2204 and 15.2-2232 of the *Code of Virginia* to replace an existing monopole and related site modifications at a previously approved telecommunication facility. Located at 11116 Henderson Rd. on approx. 3.93 ac. of land zoned R-C and WS. Tax Map 96-1 ((1)) 17. (Concurrent with SE 2005-SP-015.) SPRINGFIELD DISTRICT.

SE 2005-SP-015 - WASHINGTON, D.C., SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS - Appl. under Sect. 3-0C04 of the Zoning Ordinance to replace an existing monopole and related site modifications at a previously approved telecommunication facility. Located at 11116 Henderson Rd. on approx. 3.93 ac. of land zoned R-C and WS. Tax Map 96-1 ((1)) 17. (Concurrent with 2232-S05-5.) SPRINGFIELD DISTRICT. JOINT PUBLIC HEARING.

2232-S05-5 - WASHINGTON, D.C., SMSA LIMITED  
PARTNERSHIP D/B/A VERIZON WIRELESS  
SE 2005-SP-015 - WASHINGTON, D.C., SMSA LIMITED  
PARTNERSHIP D/B/A VERIZON WIRELESS

September 14, 2005

Frank Stearns, Esquire, with Venable LLP, reaffirmed the affidavit dated August 25, 2005. Commissioner Hart disclosed that his law firm, Hart & Horan, PC, had a pending case with Mr. Stearns' law firm but there was no financial relationship and it would not affect his ability to participate in this case.

Commissioner Murphy pointed out that in the proposed development conditions, the maximum number of antenna on the tower should be changed to 21. He asked that Vice Chairman Byers ascertain whether there were any speakers for this application. There being none, he asked that presentations by staff and the applicant be waived and the public hearing closed. No objections were expressed; therefore, Vice Chairman Byers closed the public hearing and recognized Commissioner Murphy for action on this case. (A verbatim excerpt is in the date file.)

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Commissioner Murphy MOVED THAT THE PLANNING COMMISSION FIND THAT 2232-S05-5 SATISFIES THE CRITERIA OF LOCATION, CHARACTER, AND EXTENT AS SPECIFIED IN SECTION 15.2-2232 OF THE *CODE OF VIRGINIA*, AND THEREFORE IS SUBSTANTIALLY IN ACCORD WITH PROVISIONS OF THE COMPREHENSIVE PLAN.

Commissioner Lawrence seconded the motion which carried unanimously with Commissioner Harsel absent from the meeting.

Commissioner Murphy MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT IT APPROVE SE 2005-SP-015, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED SEPTEMBER 6, 2005.

Commissioner Lawrence seconded the motion which carried unanimously with Commissioner Harsel absent from the meeting.

Commissioner Murphy MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT IT APPROVE A MODIFICATION OF THE TRANSITIONAL SCREENING 3 REQUIREMENT ALONG ALL SITE BOUNDARIES, AS SHOWN ON THE SE PLAT.

Commissioner Lawrence seconded the motion which carried unanimously with Commissioner Harsel absent from the meeting.

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At the conclusion of this case, Chairman Murphy resumed the Chair.

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The Commission went into recess at 10:30 p.m. and reconvened in the Board Auditorium at 10:44 p.m.

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PCA 1999-PR-035 - BATAL CORBIN, LLC - Appl. to amend RZ 1999-PR-035 previously approved for cluster residential development at a density of 1.82 du/ac to permit modification of approved proffers with no changes in density and associated modifications to the site design. Located in the S.W. quadrant of the intersection of Gallows Rd. and Idylwood Rd. on approx. 6.50 ac. of land zoned R-2 Cluster. Comp. Plan Rec: 1-2 du/ac. Tax Map 39-4 ((58)) A, B, and 1 - 14. PROVIDENCE DISTRICT. PUBLIC HEARING.

Francis McDermott, Esquire, with Hunton & Williams LLP, reaffirmed the affidavit dated September 1, 2005. Commissioner Hart disclosed that two of the entities listed in the affidavit had offices on the same floor in the same building as his law firm, Hart & Horan, PC, but there was no financial relationship and it would not affect his ability to participate in this case.

Mary Ann Godfrey, Zoning Evaluation Division (ZED), Department of Planning and Zoning (DPZ), presented the staff report, a copy of which is in the date file. She noted that staff recommended approval of the application.

Mr. McDermott reviewed the history of the property and explained that the subject application had been filed in an attempt to resolve alleged violations of proffers associated with RZ 1999-PR-035, approved by the Board of Supervisors on October 20, 2003, concerning limits of clearing and grading, tree preservation, and tree transplanting. He stated that appeals of the proffer interpretation and the Notice of Violation had been filed and preserved for the record all of the objections, factual disputes, and legal arguments posed in those appeals. Mr. McDermott outlined the changes that had been made to the GDP and the proffers: increased number of supplemental plantings, redesigned stormwater management pond, expanded landscaping around the pond, increased tree cover and landscaping within all buffer areas, improved quality of committed trees, increased 10-year canopy, improved energy conservation design, enhanced supplementation of trees, and added buffer between the residences and the conservation area. He indicated that the proffers had been amended to require greater oversight by the project arborist regarding the planting of trees and removal of the existing structure and implementation of a regular inspection and maintenance plan for the White Oak tree located in the northeast corner of the site, stormwater management, and peripheral buffering landscaping. He said he believed that cluster zoning would protect and promote the preservation of the upland forest, major portions of the southern and western buffers, and vegetative views along Idylwood Road and Gallows Road and establish growth in the portions of the western buffer and certain mature trees in the northern portion of the property.

In response to a question from Commissioner Lawrence, Michael Knapp, Urban Forest Management Division, Department of Public Works and Environmental Services (DPWES), explained that the use of the 2.0 multiplier in claiming additional tree canopy credits referred to a provision in Chapter 12 of the Public Facilities Manual (PFM). He noted that in this case, the Urban Forester might double the amount of restoration that had to occur in preservation areas to address violations due to the additional credit that had been taken in the calculations.

Responding to a question from Commissioner de la Fe, Mr. McDermott said the removal of the hollow tulip poplar in the northeast corner of the site should not have been performed without the approval of the Urban Forester and there had been no need for anyone to be in the tree preservation areas except to plant trees.

In response to another question from Commissioner de la Fe, Mr. Knapp stated that the tree preservation monitoring and landscaping improvements would help minimize future conflicts. Barbara Byron, ZED, DPZ, commented that County staff had begun discussing ways to improve internal practices and monitoring of sites.

Responding to questions from Commissioner Hart, Ms. Byron stated that County staff was currently working on finalizing suggested tree preservation plan language, which would be presented to the Planning Commission. Mr. Knapp explained that staff had proposed that a more detailed arboricultural study be required during the rezoning process to determine which trees would be removed or saved. He noted that staff had also proposed a two-tier system that would specify which trees would be preserved and which ones were uncertain and a system where the GDP would delineate the specific sets of trees, which would be available at the public hearing.

Commissioner Alcorn commented that County staff was committed to enforcement of proffers and recommended that developers be prepared to follow through with their commitments and proposed plans.

Commissioner Wilson said she hoped that the County would expedite the new tree preservation plan language to avoid such violations in the future.

Chairman Murphy called the first listed speaker and recited the rules for public testimony.

Flint Webb, 8308 Westchester Drive, Vienna, expressed concern about destruction of the White Oak tree and further damage to other trees due to the removal of the existing house on the site. He said he agreed that the current tree preservation process should be changed. He requested that the applicant provide information about the impermeable surface of the actual subdevelopment plan so he could better understand the stormwater impacts. Mr. Webb noted that he supported the design of the stormwater management pond; however, he opposed the significant loss of tree canopy. He recommended that the applicant work with the neighbors to tighten the proffer language and provide all requested information in a timely manner and that the County hold the applicant accountable to the proffers.

Tim Reed, 202 Talahi Road, Vienna, representing the Dunn Loring Woods Civic Association, expressed opposition to the proposed proffers because the applicant had not met the original tree save proffers and had not strictly conformed within the limits of clearing as promised. He presented a photograph of an equipment operator in a tree preservation area on the site, a copy of which is in the date file. He recommended that Commissioners view the video of the public hearing regarding the rezoning application and the original tree preservation proffer text.

In response to a question from Commissioner Alcorn, Mr. Reed said he felt that there was a misplaced skepticism about what citizens said and not enough about what was being promised by the applicant. He suggested that Commissioners not just accept the surface answer given by staff or the applicant but examine the issues further.

Rebecca Cate, 8119 Westchester Drive, Vienna, Chairman of the Dunn Loring Gardens Civic Association Board of Directors, requested that the Commission defer decision on the application. She noted that the applicant had agreed to review the proffers with staff and the association to reach a consensus. She said it was not appropriate that the Director of DPWES had the ability to grant the decimation of nearly an entire proffered tree save area during the site review process. Ms. Cate indicated that she had distributed tonight her testimony at the January 16, 2002 Commission public hearing on proposed amendments to the Zoning Ordinance, Subdivision Ordinance, and PFM concerning tree preservation and the letter of response from staff, a copy of which is in the date file. She pointed out that in the letter, staff had stated that the Director of DPWES did not have the authority to waive or modify any proffers approved by the Board of Supervisors in rezoning cases; therefore, the proposed amendments did not grant the Director unilateral authority to allow construction plan changes that were not in substantial conformation with the approved development plans. She recommended that developers be required to submit a health and conditions survey of all trees on the property during the rezoning process with a public hearing held in order to change any proposed conditions.

Mike Cavin, 8119 Westchester Drive, Vienna, claimed that the applicant had distorted proffer language to justify the destruction of the trees in the northeast corner preservation area. He suggested that the proffers be tightened to prevent this situation from occurring again. He further suggested that the Commission defer the decision indefinitely until the application had been improved.

Julie Tutwiler, 8217 Westchester Drive, Vienna, stated that the neighbors would like to meet with the applicant to develop stronger proffer language to ensure that the neighbors would be fully compensated if their trees were lost due to the applicant's failure to follow the limits of clearing and grading and use appropriate equipment in sensitive areas. She also noted that the neighbors wanted to ensure that the mix of proposed supplemental trees would be compatible with the surrounding neighborhood.

Burgess Allison, 8301 Westchester Drive, Vienna, expressed opposition to the proposal, citing deficient replanting of the lost tree canopy, disregard for the original proffers, and ambiguous proffer language.

Mr. Allison claimed that the applicant had accepted full tree canopy credits for the lost canopy, falsely measured the canopy number, obtained credit for open space that was behind the limits of clearing and grading, and proposed a smaller canopy. He commented that the Urban Forester had adjusted his original estimate of canopy loss and had given the applicant credit for more than 4,000 square feet because grass had started to grow where the excavator had driven over the fence in the tree save area. He recommended that the proffers be less ambiguous and the tree preservation process be enforceable.

Wesley Ford, 8111 Idylwood Drive, Dunn Loring, asked that the Planning Commission enforce the establishment of an escrow to protect the seven trees on his property if any of them died within five years of the issuance of the last Residential Use Permit.

Scott Cadle, 8236 Westchester Drive, Vienna, President of the Dunn Loring Gardens Civic Association, suggested that the issues associated with tree preservation be addressed, the proffer language be tightened, and the proposed mix of trees be refined to be compatible with the area. He disagreed with the 4,000 square feet of canopy credit that had been given to the applicant.

Deborah Reyher, 8628 Redwood Drive, Vienna, recommended that the Commission ensure that proffers were specific, enforceable, and honored as promises to the citizens.

Ray Worley, 2537 Gallows Road, Dunn Loring, referred to a letter dated September 11, 2005, from Ted Corbin, the former owner of the subject property, a copy of which is in the date file. He indicated that the letter stated that the tulip poplar tree was a diseased tree that needed to be removed. He pointed out that he had removed the heavy debris on the western edge of the property by using a front end loader.

Commissioner Wilson assured the speakers that the Commission would ensure that the proffer language had been tightened. She said that the applicant should not receive the tree canopy credit multiplier due to the violation that had occurred on the northeast corner of the site.

There being no more speakers, Chairman Murphy called for a rebuttal statement from Mr. McDermott.

Mr. McDermott noted that he regretted the violation, but said that an entire tree save area had not been removed. He reported that the calculation of tree canopy disturbance along the western and southern buffers had been recognized as a factual error and had been adjusted by Mr. Knapp. He stated that the tulip poplar tree had been removed because it was hollow and said no other tree had been removed that had not been approved. He acknowledged that there had been a difference between what had been approved during the rezoning and what had actually occurred onsite. Mr. McDermott agreed that a health and condition tree survey should be at least performed in the area where tree preservation was proffered and specifics be established by the time of rezoning. He explained that two certified arborists and the Urban Forester had determined which trees should be removed with respect to the tree preservation plan. He indicated that Mr. Ford had met with the applicant to express concern about the construction causing a change in the water table that might kill the trees.



Mr. McDermott stated that the proposal substantially improved the original plan although there had unfortunately been a loss of trees.

Chairman Murphy called for concluding staff remarks from Mr. Knapp.

Mr. Knapp addressed Mr. Allison's comment about the 4,000 square feet of grass and explained that he had approximated the amount of area that had been affected by overclearing on the site.

Commissioner Wilson pointed out that two problems had occurred in the application: the violation on the northeast corner and the process between the developers and staff to obtain approval of the tree preservation plan. She commented that the application had brought the problems surrounding tree preservation proffers to the attention of the County. She said the applicant had been at fault for allowing the violation to occur and added that she would like to work with Mr. McDermott to prevent this from occurring again.

Responding to questions from Commissioner Lawrence, Mr. Knapp explained that if there had been any damage to trees caused by construction, symptoms typically manifested within the first three years and a period up to five years would be optimal to evaluate any problems. He noted that the applicant could add a proffer that stated that the trees on Mr. Ford's property would be protected for up to five years.

There were no further comments or questions from the Commission and staff; therefore, Chairman Murphy closed the public hearing and recognized Commissioner Lawrence for action on this case. (A verbatim excerpt is in the date file.)

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Commissioner Lawrence MOVED THAT THE PLANNING COMMISSION DEFER THE DECISION ONLY ON PCA 1999-PR-035, BATAL CORBIN, LLC, TO A DATE CERTAIN OF OCTOBER 6, 2005, WITH THE RECORD TO REMAIN OPEN FOR WRITTEN COMMENT.

Commissioners Alcorn and Byers seconded the motion which carried unanimously with Commissioner Harsel absent from the meeting.

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The meeting was adjourned at 12:30 a.m.

Peter F. Murphy, Jr., Chairman

Suzanne F. Harsel, Secretary

CLOSING

September 14, 2005

Audio and video recordings of this meeting are available at the Planning Commission Office, 12000 Government Center Parkway, Suite 330, Fairfax, Virginia 22035.

Minutes by: Kara A. DeArrastia

Approved on: \_\_\_\_\_

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Linda B. Rodeffer, Clerk to the  
Fairfax County Planning Commission